Liquid Transporters, Inc. *and* General Drivers, Warehousemen and Helpers Local No. 89, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 9-RC-13117

July 29, 1981

DECISION AND DIRECTION OF SECOND ELECTION

Pursuant to a Decision and Direction of Elections[1] issued by the National Labor Relations Board on August 6, 1980, elections by secret ballot were conducted on September 5 and 6, 1980, under the direction and supervision of the Regional Director for Region 9, among the employees in the units described below. At the conclusion of the elections, the parties were furnished a tally of ballots which showed that in Unit A, of approximately 99 valid ballots, 42 were cast for and 56 against the Petitioner, and there was 1 challenged ballot, an insufficient number to affect the results. In Unit B, of approximately 39 valid ballots, 24 were cast for and 7 against the Petitioner, and there were 8 challenged ballots, an insufficient number to affect the results. Thereafter, the Petitioner filed a timely objection to the election in Unit A. No objections were filed to the election in Unit B.[2]

After an investigation, the Regional Director issued his Report on Objection and Recommendations to the Board wherein he recommended that the Petitioner's objection be overruled and that a certification of results of election be issued. Thereafter, the Petitioner filed exceptions and the Employer filed an answering brief.

The Board has considered the Regional Director's report, the Petitioner's exceptions, the Employer's answering brief, and the entire record in the case, and makes the following findings:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner is a labor organization which claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The following unit, designated as Unit A in the Board's aforementioned Decision and Direction of Elections, constitutes a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Unit A: All truck drivers employed by the Employer at its Fern Valley Road terminal, Louisville, Kentucky, including owner-operators and nonowner-drivers of equipment leased by the owners to the Employer; excluding all mechanics, mechanics helpers, check-out lane employees, cleaning rack employees, office clericals, dispatchers, guards and supervisors as defined in the Act.

5. The Board has considered the Regional Director's report, the Petitioner's exceptions, and the Employer's answering brief, and hereby adopts the Regional Director's findings and recommendations only to the extent consistent herewith.

The Petitioner maintains that letters from the Employer to the employees dated August 20, 22, 25, and 29, 1980, contain objectionable statements that warrant setting aside the election. Contrary to the Regional Director, we find that the Employer engaged in objectionable conduct by making threats of loss of jobs, strikes, and loss of business that had a coercive impact on the employees which interfered with the results of the election.

Thus, in its August 20, 1980, letter to the employees, the Employer refers to predictions that new nonunion carriers "will do their utmost to get business by undercutting the *union* carriers' tariffs" and that "[b]ad business conditions have already done in a number of large union over-the-road carriers." Specifically referring to a union carrier, Dealers Transport, whose work in Louisville was taken over by another carrier, the letter states that "[t]his means that all Dealer Transport's drivers are now out in the cold." The Employer adds that "Wilson Freight (one of the country's largest union truck lines) has recently gone into bankruptcy, putting many of its drivers completely out of work. Another big union carrier, Johnson Freight Lines, has gone out of business completely." Finally, the Petitioner objects to the statement in that letter that "[*t*]*he same loss of business could very well occur here in Louisville*, if Local 89 should happen to win the NLRB election here and then try to force the national contract on us by taking you out on strike."

In the August 22 letter, the Employer states that it will never agree to the Teamsters national contract, adding:

> The only way the Union could try to force such a noncompetitive contract on us would be by taking you out on strike. That is just exactly what they did a couple of years ago at our Calvert City Terminal, but it didn't suc-

[1] 250 NLRB 1421.

[2] On September 15, 1980, the Regional Director certified the Petitioner as the collective-bargaining representative of the employees in Unit B.

> ceed in getting the Teamsters or the employees there anything but lost earnings and benefits . . . .
>
> As far as the Union's National Contract is concerned, they have had a long strike in every negotiation on it for the last several years. Even at that, some carriers have not accepted it, although that meant a still longer strike.

The August 22 letter also refers to strikes by the Petitioner at Manning Equipment and Dealers Truck Equipment and Dixie Warehouse which the Employer characterizes as "very violent" and "violent" and "unsuccessful." The Employer, moreover, makes reference to an employee who "had his eye shot out" in the Manning Equipment strike.

The August 25 letter poses the question, "What will happen if the Union wins the election and then calls a strike?" In response, the letter states:

> Just remember—there are plenty of unemployed truck drivers looking for jobs now. Has the Teamsters Union *guaranteed* to find you another job as good as the one you now have, if they take you out on strike and you are then permanently replaced?

This letter states further that "THE ONLY WAY YOU CAN BE SURE the Union doesn't cause you any more trouble in the future is to vote against them in the NLRB election next week." The Petitioner also objects to the statement in the August 29 letter that "[i]f the Union wins this election, then *your* job, *your* earnings and benefits, and *your* working conditions will be in the Union's hands."

Based on the foregoing, we find that the Employer's repeated references associating the Petitioner with strikes, loss of jobs, and loss of business had a coercive impact on the employees by tending to create the impression that such adverse consequences would be a direct result of unionization.[3]

The Employer maintains that its statements fall within the bounds of permissible campaign conduct and that, in the August 20 letter, for example, it stated that it was "not trying to be alarmist or threatening about the future which this Company faces because of the Union." As the Board observed in *Turner Shoe Company, supra* at 146, quoting from *Georgetown Dress Corporation*, 201 NLRB 102, 116 (1973):

> Communications which hover on the edge of the permissible and the [im]permissible are objectionable as "[i]t is only simple justice that a person who seeks advantage from his elected use of the murky waters of double *entendre* should be held accountable therefor at the level of his audience rather than that of sophisticated tribunals, law professors, scholars of the niceties of labor law, or 'grammarians.'"

Inasmuch as we have found that the Employer's campaign, with its emphasis on the adverse consequences of unionization, was clearly coercive and prevented the employees from exercising their free choice, we shall sustain the Petitioner's objection. Accordingly, we shall direct that a second election be conducted.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

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[3] *Turner Shoe Company, Inc., and Carmen Athletic Industries, Inc.*, 249 NLRB 144 (1980).